REMARKS/ARGUMENTS

In response to the Office Action mailed December 4, 2009, Applicant amends his application and requests reconsideration in view of the amendments and the following remarks. In this response, Claim 19 is amended, no claims have been cancelled without prejudice, and no claims have been added so that Claims 19-35 remain pending. No new matter has been added.

Claims 19-22 and 24 were rejected under 35 USC 112, first paragraph. Applicants have amended the claims to more clearly and distinctly set forth the invention. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

Claims 19-21 and 24 were rejected as being unpatentable over Faxon in view Tardif. This rejection is respectfully traversed.

Faxon discloses stents, polymers and drugs for treating restenosis. Various polymers are disclosed. Faxon also discloses the use of a rapamycin. The Examiner also contends that Faxon discloses that a polymer can be an antioxidant be physically isolating the drug.

Tardif discloses the prevention of restenosis with antioxidants.

In order to make a finding of obviousness, an Examiner must (1) determine the scope and content of the prior art, including non-analogous art if it is in the field of endeavor reasonably related to the particular problem to which the claimed invention is directed, (2) ascertain the differences between the claimed invention and the prior art, considering both the prior art and claimed invention as a whole, and (3) resolve the level of ordinary skill in the art at the time of the invention, factoring in the creativity that one of ordinary skill in the art would employ as well as the Examiner's own knowledge and technical expertise.

It is respectfully submitted that the references taken as a whole fail to disclose or suggest all of the claimed limitations. Specifically, the references fail to disclose or suggest a drug eluting medical device comprising an implantable intraluminal structure; a first polymeric solution; a pharmaceutically active agent, in therapeutic dosages, incorporated into the first polymeric solution creating a resulting mixture, a separate and distinct antioxidant incorporated into the resulting mixture to substantially hinder degradation of the pharmaceutically active agent through oxidation, thereby creating a base coat with the antioxidant physically proximate the pharmaceutically active agent, the base coat being affixed to at least a portion of the implantable intraluminal structure; and a second polymeric solution forming a top coat affixed to the base coat. Unlike the combination of references, there are not two polymers, a drug and an antioxidant in a layered approach. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

A favorable action on the merits is earnestly solicited.

Respectfully submitted,

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